

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

John C. Harvey and James W. Cuddihy

Appeal No. 2007-1837

Serial No.: 08/470,571

Filed: June 6, 1995

For: SIGNAL PROCESSING APPARATUS AND  
METHODS

Confirmation No.: 7586

Art Unit: 2622

Examiner: David Louis Ometz

**SECOND SUPPLEMENTAL APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Madam:

This Supplemental Brief is filed to ensure that the Board of Patent Appeals and Interferences is fully aware of four decisions by panels of the Board issued in related appeals.

First on December 18, 2008, a panel of the Board issued a Decision on Request for Rehearing jointly in Appeal Nos. 2008-0334 and 2007-4044. These are appeals in related reexamination proceedings of U.S. Patent 4,694,490, Control No. 90/006,800 (Appeal No. 2008-0334) and U.S. Patent 4,704,725, merged Control Nos. 90/003,397 and 90/006,841 (Appeal No. 2007-4044). The Decision affirmed the panel's prior decision regarding the proper scope to be ascribed to claims of an expired patent under reexamination. The Decision also altered slightly the interpretation of the claim term "user specific."

On December 19, a panel of the Board issued a Decision on Appeal in Appeal 2008-4228 from the *ex parte* reexamination of related U.S. Patent 4965,825 (Control No. 90/006,536). The Decision adopted the standard for interpreting claim of an expired patent and the interpretation of the term "user specific" from the Decision discussed above. The Decision reversed the Examiner's rejection of the appellant's claim of priority to the parent 1981 application. The Decision reversed the Examiner rejections under 35 U.S.C. § 102. The Board affirmed some and reversed some of the rejections under 35 U.S.C. § 103. The Board affirmed the double patenting rejections.

On January 7, 2009, a panel of the Board issued a Decision on Appeal in Appeal 2008-4864 from the *ex parte* reexamination of related U.S. Patent 5,109,414 (Control No. 90/006,838). The Decision reversed the Examiner's rejections of the claims of the '414 Patent.

On January 15, 2009, a panel of the Board issued a Decision on Appeal in Appeal 2007-2115 from the final rejection of claims in application Serial No. 08/487,526. The Decision affirm-in-part the rejections on appeal and contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b).

In the instant appeal, an Appeal Brief was filed February 8, 2005, an Examiner's Answer was mailed October 6, 2005, and a Reply Brief was filed December 6, 2005, which was acknowledged on January 9, 2006. The Board issued an Order Returning Undocketed Appeal to the Examiner on April 11, 2006. A Substitute Appeal Brief was filed April 26, 2006, in response to which an Examiner's Answer was mailed June 27, 2006, and a Reply Brief was filed July 3, 2006. The Reply Brief was acknowledged on November 24, 2006. On April 9, 2007, the appeal was assigned Appeal No. 2007-1837. An Oral Hearing was conducted on December 5, 2007. A Supplemental Brief supplementing the statement of the Related Appeals and Interferences with activities that occurred between the filing of the Reply Brief on July 3, 2006,

and September 30, 2008 was filed September 30, 2008. This Second Supplemental Brief supplement the statement of the Related Appeals and Interferences with activities since the Supplemental Brief was filed September 30, 2008.

## II. RELATED APPEALS AND INTERFERENCES

Since the Reply Brief was filed July 3, 2006, the following actions have occurred in the related appeals listed in the Appeal Brief:

A Decision on Rehearing was issued December 18, 2008 in Appeal Nos. 2008-0334 and 2007,4044 regarding reexamination of U.S. Patents 4,694,490, Control No. 90/006,800 and 4,704,725, merged Control Nos. 90/006,697 and 90/006,841.

An Oral Hearing was conducted on October 1, 2008, in Appeal No. 2008-4228 regarding the reexamination proceeding of related U.S. Patent 4,965,825, Control No. 90/006,536. A Decision on Appeal was issued December 19, 2008.

An Oral Hearing was conducted on November 19, 2008, in Appeal No. 2008-4864 regarding the reexamination of related U.S. Patent 5,109,414, Control No. 90/006,838. A Decision on Appeal was issued January 7, 2009.

Corrected briefing was completed in the appeal in the related reexamination proceeding of U.S. Patent 5,335,277, merged Control Nos. 90/006,563 and 90/006,698 after a July 30, 2008, Order Returning an Undocketed Appeal to the Examiner. This appeal is awaiting docketing at the Board.

An Oral Hearing was conducted on November 19, 2008, in Appeal No. 2008-4816 regarding the reexamination of related U.S. Patent 5,887,243, Control No. 90/006,688.

A Decision on Appeal in Appeal 2007-2115 from the final rejection of claims in application Serial No. 08/487,526 was issued January 15, 2009.

CONCLUSION

Appellant respectfully requests that this statement updating the status of the related appeals and interferences be made of record in this appeal and that a decision on the appeal be issued promptly.

Dated: January 15, 2009

Respectfully submitted,

By \Thomas J. Scott, Jr.\

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